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Conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

Thirty-seventh report of the Advisory Committee on Administrative and Budgetary Questions on the programme budget for the biennium 2008-2009

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/62/538) and the letter dated 4 October 2007 from the Registrar of the International Tribunal for the Former Yugoslavia to the Secretary-General (A/62/538/Add.1, annex). During its consideration of the report, the Committee met with representatives of the Secretary-General, as well as with the President of the International Criminal Tribunal for Rwanda, the Deputy Registrar of the International Court of Justice, the Registrar of the International Tribunal for the Former Yugoslavia and other officials of the three judicial bodies, who provided additional information and clarification.

2. In paragraph 5 of its resolution 61/262, the General Assembly recalled its resolution 37/240, requested the Secretary-General to review and update the travel and subsistence regulations for the International Court of Justice, taking into account the recommendation of the Advisory Committee (see A/61/612, para. 15) and bearing in mind the relevant provisions of the Statute of the International Court of Justice, and to report thereon to the General Assembly for its approval at its sixty-second session.

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3. In paragraph 6 of the resolution, the General Assembly endorsed the proposal of the Secretary-General that the annual salaries of the members of the International Court of Justice and judges and ad litem judges of the two Tribunals should comprise an annual base salary with a corresponding post adjustment. In paragraph 7 of the resolution, the Assembly set the annual base salary at $133,500, effective 1 January 2007, and, in paragraph 8, decided to maintain the current level of salaries for members of the International Court of Justice and judges and ad litem judges of the Tribunals for the duration of their current terms of office or until such time as that amount was overtaken by the application of a revised system. In paragraph 11 of the resolution, the Assembly requested the Secretary-General to submit a report to it at its sixty-second session on options for designing pension schemes for the members of the International Court of Justice and for the judges of the Tribunals, including defined-benefit and defined-contribution schemes, taking into account the possibility of calculating pensions on the basis of the number of years served rather than the term of office.

II. Matters under consideration

A. Travel and subsistence regulations for the members of the International Court of Justice

Standards of travel

4. The Advisory Committee recalls that, in accordance with the travel and subsistence regulations of the International Court of Justice (General Assembly resolution 37/240, annex), members of the Court, ad hoc judges and their dependants are entitled to first-class travel. According to the Secretary-General, in paragraph 6 of his report, the Court has indicated that the treatment of its members as regards the standard of travel has traditionally been at least comparable to that of directors-general of specialized agencies and that the travel and subsistence regulations of the Court as currently in force reflected that tradition. The Committee notes that the travel and subsistence regulations of the Court are fixed separately, reflecting the unique nature of the Court.

5. The Advisory Committee recalls its latest report on the matter, in which it noted that standards of accommodation had evolved considerably and that first-class air travel was now restricted to a limited number of cases, and that most senior officials were authorized to travel at the class immediately below first class. The Committee also recommended that the travel and subsistence regulations approved for the Court by the General Assembly in 1982 should be reviewed and updated in line with the current standards of the Organization (see A/61/612, paras. 14 and 15).

6. As noted above, the Secretary-General is to review and update the travel and subsistence regulations for the Court. The Advisory Committee notes that, in its resolution 62/238 (sect. XV, para. 5), the General Assembly requested the Secretary-General to report on the feasibility of harmonizing standards of travel for staff members, members of organs and subsidiary organs of the United Nations and organizations of the United Nations system, on the basis of a review and proposals by the United Nations System Chief Executives Board for Coordination (CEB). Upon enquiry, the Committee was informed that the CEB High-level Committee on

Management would take up the issue at its fifteenth session, to be held on 17 and 18 March 2008.

7. Upon enquiry, the Advisory Committee was provided with a list of trips taken by resident and non-resident judges, their dependants and ad hoc judges from 2003 to 2007. The Committee notes that most trip segments or complete trips during that period were taken in business class, while a small number were taken in first or economy class.

8. The Advisory Committee notes that the Secretary-General recommends that no changes be made in the provisions of articles 1 and 2 of the travel and subsistence regulations of the International Court of Justice. **The Committee, at this time, interposes no objection to this recommendation, taking into account the information contained in paragraphs 16 and 17 of the report of the Secretary-General.**

Assignment grant

9. The Advisory Committee notes that article 3, paragraph 1 (a) (ii), of the travel and subsistence regulations of the Court provides that resident members of the Court are entitled to an installation grant in an amount corresponding to that applicable to senior officials of the Secretariat. The Committee also notes that since 2004, the daily subsistence allowance portion of the assignment grant for senior Secretariat officials has been computed on the basis of the daily subsistence rates promulgated by the International Civil Service Commission. **The Committee agrees with the recommendation of the Secretary-General that there should be no change in article 3, paragraph 1 (a) (ii), of the travel and subsistence regulations of the Court.**

B. Remuneration and retirement benefits for the members of the International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

Remuneration

10. As noted above, the General Assembly has set, effective 1 January 2007, the annual net base salary of the members of the International Court of Justice and the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda at $133,500, with a corresponding post adjustment per index point equal to 1 per cent of the net base salary, to which would be applied the post adjustment multiplier for the Netherlands or for the United Republic of Tanzania, as appropriate (see resolution 61/262, para. 7).

11. The Advisory Committee notes that, in a letter dated 3 April 2007 to the President of the General Assembly (A/61/837), the President of the International Court of Justice expressed the Court's deep concern that the proposed action regarding members' emoluments would create inequalities among judges and requested postponement of action on the draft resolution that was subsequently adopted, on 4 April, as resolution 61/262. The Court's position is outlined in annex II to the report of the Secretary-General. A memorandum, dated 6 June, from

the Legal Counsel to the Office of Human Resources Management addressing issues raised by the Registrar of the Court in a letter to the Office of Human Resources Management dated 19 April is included as annex I to the report.

12. The Advisory Committee also notes that, in a letter dated 29 May 2007, the President of the Court notified the Secretary-General of the Court's decision that an ad hoc judge appointed to sit in the case concerning territorial and maritime dispute between Nicaragua and Colombia following the adoption of resolution 61/262 would receive the same emolument as the ad hoc judge appointed prior to the adoption of the resolution (see A/62/538, paras. 54-57). **The Committee notes that this action is incompatible with the decision of the General Assembly in its resolution 61/262. Upon enquiry, the Committee was informed that a similar situation could arise in a limited number of other cases pending before the Court. Therefore, the Assembly may wish to examine the impact of the implementation of resolution 61/262 on the position of ad hoc judges sitting in those cases.**

13. **The President of the Court has presented arguments pertaining to resolution 61/262 (A/62/538, annex II), with which the Legal Counsel largely concurred (ibid., annex I). The Committee cannot but note that this interpretation could affect the exercise of the General Assembly's mandate under article 32 of the Statute of the Court.**

14. The first option proposed by the Secretary-General (ibid., para. 74) would entail establishing the salaries of the members of the Court and of the judges of the Tribunals in euros at the current level, namely, €174,708 per annum, subject to periodic cost-of-living adjustments. **The Advisory Committee notes that international salary scales within the United Nations are based on the United States dollar, with adjustments for inflation and currency fluctuations through the post adjustment system. Establishing salaries in a currency other than the United States dollar for the members of the Court and for the judges of the Tribunals would be a departure from current practice, the implications of which the General Assembly would need to analyse fully, irrespective of the seats of the Court and the Tribunals and the official currencies used in the countries concerned.**

15. The second option (ibid., paras. 75-77) would entail maintaining the salary system, as approved by the General Assembly in its resolution 61/262, whereby the salaries of the judges consist of a net base salary and a post adjustment amount per index point equal to 1 per cent of base salary, as summarized below, but at a higher level:

(United States dollars)

	Current net base salary (as at 1 January 2007)[a]	*Annual salary (starting point)*[b]	*Proposed annual base salary (increase of 2 per cent)*	*Proposed total salary*[c]
International Court of Justice[d]	133 500	170 080	173 450	274 744
International Tribunal for the Former Yugoslavia[d]	133 500	170 080	173 450	274 744
International Criminal Tribunal for Rwanda[e]	133 500	170 080	173 450	239 534

[a] General Assembly resolution 61/262.
[b] General Assembly resolution 59/282.
[c] Proposed base salary plus applicable post adjustment.
[d] As at 1 March 2008, the post adjustment multiplier for the Netherlands was 67.9 and the official United Nations operational exchange rate was €0.661:$1.
[e] As at 1 March 2008, the post adjustment multiplier for the United Republic of Tanzania was 41.7 and the official United Nations operational exchange rate was TSh1163:$1.

16. The Advisory Committee notes that, under this option, the annual salaries of members of the Court and the judges of the International Tribunal for the Former Yugoslavia would be $274,744 and that the annual salaries of the judges of the International Criminal Tribunal for Rwanda would be $239,534. Those figures include the relevant post adjustment rates and an annual net base salary of $173,450, reflecting an increase of 2 per cent from the current level of $170,080. The Committee notes from the report that the proposed increase in the net base salary is based on the recommendation of the International Civil Service Commission for a no-gain/no-loss increase of 1.97 per cent for Professional staff (see A/62/30, para. 31). **Accordingly, the Committee reiterates its position that the consolidation of points from post adjustment to base salary for staff, which is on a no-loss/no-gain basis, is not relevant to a proposal whereby an increase would result (see A/61/612, para. 9).**

17. **The Advisory Committee recalls the previous decision of the General Assembly that the salaries of judges should consist of a net base salary and a post adjustment amount per index point equal to 1 per cent of the net base salary to which would be applied a post adjustment multiplier (resolution 61/262, para. 6).**

18. The Advisory Committee notes the financial implications of the two options set out in the table following paragraph 86 of the report of the Secretary-General.

Retirement benefits

19. In paragraphs 78 to 81 of his report, the Secretary-General sets out the implications for pension benefits of the members of the Court of the two salary options under the current system of pension benefits. The Advisory Committee notes, however, that a study on options for designing pension schemes is currently being conducted by a consulting firm and would be finalized in March 2008 and presented during the second part of the resumed sixty-second session of the General Assembly. **The Advisory Committee recommends that the Assembly defer consideration of the retirement benefits for members of the Court pending receipt of the pension study.**

III. Frequency of review of conditions of service and remuneration

20. The Secretary-General indicates in paragraph 86 of his report that if the General Assembly decides to revert to a three-year cycle for review of the conditions of service and remuneration, the next comprehensive review would be undertaken at the sixty-fifth session, in 2010. **The Advisory Committee notes that, should the Assembly decide to maintain a salary for the judges consisting of a base salary plus post adjustment, a review would be necessary only if the International Civil Service Commission were to recommend and the General Assembly were to approve an increase in the net remuneration. In its view, this would imply a review of the judges' net remuneration.**